IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

CRP.No. 873 of 2006()

AGAINST THE ORDER DATED 07/06/2006 IN IA 773/2006 IN OS.79/1999 of PRL.SUB COURT,THIRUVANANTHAPURAM.

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REVN. PETITIONER: PETITIONER/DEFENDANTS

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1. UNION OF INDIA,
   REP. BY THE CABINET SECRETARY,
   GOVT. OF INDIA, NEW DELHI.

2. THE DIRECTOR GENERAL OF CIVIL AVIATION,
   NEW DELHI.

BY ADV. SRI.THOMASMATHEW NELLIMOOTTIL,SR.PANEL

RESPONDENTS: COUNTER PETITIONER/PLAINTIFFS & DEFENDANTS

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1. R.SAROJINI,
   W/O.LATE V.DAMODARAN,
   RITA NIVAS, R.K.V.ROAD,
   KOWDIAR, THIRUVANANTHAPURAM.

2. S.SUDHA, W/O.LATE CAPT.RAJKUMAR,
   SIVAM, R.K.V.ROAD,
   KANAKAKUNNU, THIRUVANANTHAPURAM.

3. HITHYA RAJKUMAR, D/O.LATE CAPT.RAJKUMAR,
   SIVAM, R.K.V.ROAD,
   KANAKAKUNNU, THIRUVANANTHAPURAM.

4. VIVEK RAJKUMAR,
   SIVAM, R.K.V.ROAD,
   KANAKAKUNNU, THIRUVANANTHAPURAM.

5. STATE OF KERALA,
   REP. BY THE CHIEF SECRETARY,
   GOVT. OF KERALA.

6. STATE OF KARNATAKA,
REP. BY THE CHIEF SECRETARY,
GOVT. OF KARNATAKA.

7. THE KERALA AVIATION TRAINING CENTRE,
REP. BY THE PRESIDENT.

8. THE GOVT. FLYING TRAINING SCHOOL,
BANGALORE, REP. BY THE PRINCIPAL.

9. THE AGNI AEROSPORTS ADVENTURE PVT. LTD.,
BANGALORE, REP. BY THE MANAGING DIRECTOR.

BY GOVERNMENT PLEADER SRI.T.K.MOHANAN
ADV.SRI.BLAZE K.JOSE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Order on I.A.No.No.3145/06 in C.R.P. No.873/06

14.12.06 Dismissed Sd/- M.Sasidharan Nambiar
Judge

/true copy/

M.SASIDHARAN NAMBIAR,J.

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C.R.P. NO.873 OF 2006

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Dated this the 15th day of December,2006

O.R.D.E.R

Petitioners are defendants 1 and 6 in O.S.79/99 on the file of Sub Court, Thiruvananthapuram. They are challenging the order dated 7.6.06 in I.A.773/06 passed by learned Sub Judge whereunder the objection raised by petitioners were rejected. As per I.A.773/06, petitioners contended that as no notice under section 80 of the Code of Civil Procedure were sent the learned Sub Judge should not have entertained the suit at all and the suit should have been returned. Under the impugned order, learned Sub Judge held that petitioners did not even file written statement as contemplated under Order VII Rule 1 of the Code of Civil Procedure and suit is for compensation and when the court issued summons to defendants, it is implied that permission was granted under section 80 of the Code of Civil Procedure and therefore objection is

not sustainable.

2. The reasoning of the court in the order cannot be approved at all. The fact that summons have been issued to the defendants does not, either expressly or impliedly, mean that leave of the court as provided under section 80(2) of the Civil Procedure was granted. There should be an application for leave showing that urgent relief has to be granted as provided under sub section (2) and leave has to be specifically sought and granted in writing. Therefore that finding in the impugned order is unsustainable.

3.The order also shows that no written statement as contemplated under Order VIII Rule 1 of the Code was filed. Case of the petitioners is that written statement was filed much earlier. Learned counsel appearing for respondents also did not dispute that factual position, though it was contended that instead of the Cabinet Secretary the written statement was signed by somebody else and it was not accepted. The order does not show that

written statement was filed and as it was not in proper form, it was not received or rejected or returned. Learned counsel appearing for petitioners asserted that a written statement has been filed as provided under the Code of Civil Procedure.

4. Learned counsel appearing for the respondents also submitted that according to petitioners, they had sent a notice before the institution of the suit to the Cabinet Secretary and it is a notice as provided under section 80 of the Code and therefore the objection is not sustainable and to clarify that position, I.A.793/06 was filed. Learned Sub Judge did not find that respondents have sent a notice and that notice has to be treated as a notice under Section 80 of the Code and therefore the objection is not sustainable. The argument of learned counsel appearing for respondent is that I.A.793/06 was allowed even before passing of the impugned order. If that be the factual position, then the finding

in the impugned order would have been that because of the leave granted,the objection is not sustainable.

5. Whatever be the position, the order as now stands is unsustainable. It is set aside. The learned Sub Judge is directed to consider the question whether a notice was sent as provided under section 80 of the Code of Civil Procedure and if not whether the suit is maintainable.

Civil Revision Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006